



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Ms. Martha C. Wright
Wright & Associates, P.C.
P.O. Box 531777
Grand Prairie, Texas 75053-1777

OR94-791

Dear Ms. Wright:

As counsel for Grand Prairie Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act ("the act"), chapter 552 of the Government Code. Your request was assigned ID# 29264.

You inform us that the school district received a request for the following three items of information:

1. Any written communique(s) or verification/acknowledgment of oral directive(s) issued by any [school district] administrator(s) during the 1993-94 school year requesting the [school district] payroll department to produce a list or lists of employees for whom payroll deduction for professional organizations dues.
2. Any list or lists produced subsequent to the above written or oral request(s)/Directive(s).
3. Identification of any and all [school district] personnel, by name and title, to whom any above mentioned list or lists was/were distributed.¹

¹We note that the school district has not submitted to this office a copy of the request for information.

You indicate that you do not understand what information is being requested. We suggest you ask for clarification from the requestor if you cannot reasonably understand the request. See Open Records Decision Nos. 304(1982); 23 (1974).

With regard to the first item, you say that "assuming the request is for documents that are requesting, acknowledging or verifying a request to the payroll department for a list of employees for whom payroll deductions are being made for professional organizations, [n]o such documentation exists" As for the third item, you say "[r]equest number three (3) does not ask for records that the district has. Rather, the request asks for the identification of certain employees of the district we believe that this request is clearly out of the purview of the Texas Open Records Act. . . . The District, therefore, believes that it should not be required to compile currently nonexistent data."

The act does not require a governmental body to make available information that does not exist. See Open Records Decision No. 362 (1983). The act applies only to information in existence and does not require a governmental body to prepare new information. See Open Records Decision No. 605 (1992). Thus, the act does not require the school district to disclose information that does not exist. Nor does the act require the school district to answer questions. See Open Records Decision No. 555 (1990) at 1.

On the other hand, a governmental body must make a good faith effort to relate a request to information that it holds. See Open Records Decision No. 561 (1990). For example, a document that indicates that a school district employee received a list of employees for whom payroll deductions for professional organization membership dues are made, if it exists, would be responsive to request item 3.

With regard to the second item, you say that "if the request is for a list or lists of employees for whom payroll deductions are being made for professional organizations, [t]hat document does not exist at this time. Such a list was prepared within the time frame of the request solely for the purpose of counting the number of persons that had payroll deductions for professional organizations and thereafter the list was immediately destroyed. It is questionable as to whether or not such a list can presently be recreated. . . . The District, therefore, believes that it is not required to create such a list in response to this request."

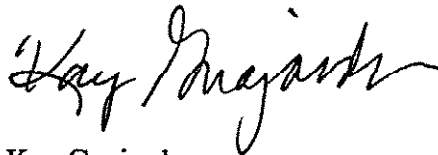
The act requires each public records officer, subject to penalties provided in the act, to protect public records from deterioration, alteration, mutilation, loss, or unlawful removal. Gov't Code § 552.203(2); see also *id.* §§ 552.002 (defining public record); .201 (identifying public records officer). The act provides criminal penalties for the willful destruction of a public record without permission. See *id.* § 552.351. Local government records may be destroyed only in accordance with chapters 201 through 205 of the Local Government Code.

You say "it is questionable as to whether or not such a list can presently be recreated." We do not understand what this means. However, we need not address whether the school district must recreate the destroyed list, since we believe that the information on such a list is protected from required public disclosure under the act.

A personal financial decision that does not concern a financial transaction between an individual and a governmental body, is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Open Records Decision Nos. 600 (1992); 545 (1990). We believe that the decision to deduct part of one's salary for the payment of membership dues to a professional organization is a private financial decision. Thus, if the school district recreates a list of school district employees who have authorized a payroll deduction for the payment of membership dues to a professional organization, such a list would be protected from disclosure under section 552.101 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MRC/rho

Ref.: ID# 29264

cc: Mr. James Pogue
439 West Highway 303
Grand Prairie, Texas 75051